IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	§ Group Art Unit: 3621
	§
Nobuyoshu Morimoto	§ Examiner: Elisca, Pierre E.
	§
	§ Atty. Dkt. No.: 5596-00300
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Serial No. 09/613,339	§
	§
	§
Filed: July 10, 2000	§
	§
For: SYSTEM AND METHOD FOR	§
NEGOTIATING IMPROVED	§
TERMS FOR PRODUCTS AND	§
SERVICES BEING PURCHASED	§
THROUGH THE INTERNET	§
	§

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir/Madam:

Further to the Notice of Appeal filed July 28, 2006, Appellant presents this Appeal Brief. Appellant respectfully requests that the Board of Patent Appeals and Interferences consider this appeal. **No fee should be due for this Appeal Brief since this is a reinstatement of a previous appeal for which the Appeal Brief Fee was already paid.** *See* M.P.E.P. § 1207.04.

I.   REAL PARTY IN INTEREST

As evidenced by the assignment recorded at Reel/Frame 012868/0548, the subject application is owned by NIHON DOT.COM CO., LTD. (d.b.a. ColonDot.com).

II.   RELATED APPEALS AND INTERFERENCES

No other appeals, interferences or judicial proceedings are known which would be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III.   STATUS OF CLAIMS

Claims 1-44 stand finally rejected.   The rejection of claims 1-44 is being appealed. A copy of claims 1-44 is included in the Claims Appendix herein below.

IV.   STATUS OF AMENDMENTS

No amendments to the claims have been submitted subsequent to the final rejection.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

A common dilemma faced by many purchasers is the uncertainty of knowing whether they have secured the best deal available. This holds true for purchases made using the Internet as well. Most consumers do not have the time or patience to search hundreds of different stores and/or web sites to find the ultimate lowest price. The traditional purchasing process typically starts with the purchaser specifying the product requirements, including commercial terms such as price or delivery. The purchaser typically browses through a plurality of Internet commerce sites to locate the best deal, i.e., locating an Internet site, which matches the product specifications as specified by the purchaser, including the commercial terms. Very often the purchaser may not have the necessary skills to conduct an effective search for the best deal on the Internet. For example, the purchaser may only look at one or two popular Internet sites and ignore the rest.

Independent claim 1 is directed to a method for negotiating improved terms for a product or service being purchased over the Internet. The method of claim 1 includes detecting an issuance of a commitment to purchase (with associated terms) for a product or service being purchased by a purchaser using an Internet web site. For example, as described on page 3 of the Specification, a personal broker-agent program may detect an issuance of a commitment to purchase by a purchaser over the Internet. The commitment to purchase may be performed by various methods, such as an entry of a credit card number or clicking of a "confirm order" button, which may be detected to indicate the issuance of the commitment to purchase. (*see, e.g.* FIGs. 1-6; page 3, lines 12 – 22; page 12, line 9 – page 13, line 8).

The method of claim 1 also includes making an offer to the purchaser to accept or reject a contract for negotiating improved terms within a specified time, in response to detecting the issuance of the commitment to purchase. For example, a broker-agent program may analyze the details of the commitment to purchase and determine if the purchase (e.g., based on the type of product service or the dollar amount of the purchase)

is of business interest. If the purchase is of interest, then the personal broker-agent program may make an offer to the purchaser to accept or reject a contract to find the specified product with improved terms within a specified time. The purchaser may accept or reject the contract. (*see, e.g.* FIG. 4A)

If the purchaser accepts the offer the offered contract, the method of claim 1 further includes conducting a search for the improved terms within the specified time, receiving the improved terms within the specified time and executing the contract. Various methods may be used to search for improved terms. For example, a personal broker-agent program may conduct an auction and/or search the Internet, and other sources for a better deal. When searching the internet, relevant suppliers' web sites and/or product pricing databases may be searched. (*see, e.g.* page 3, line 18 – page 4, line 2; page 15, lines 8-20).

Additionally, the provider of the personal broker-agent program might have established pre-negotiated agreements with preferred suppliers whereby the preferred supplier may guaranty a better price (e.g., by some fixed percentage) than the price included with the commitment to purchase. In one embodiment, the savings may be, in part, passed on to the purchaser and, in part, retained by the provider of personal broker-agent program as profit. The personal broker-agent program may evaluate results, such as auction responses and/or search results, to determine the best deal. The contract between the purchaser and the personal broker-agent program may then be executed for the best deal. If the purchaser elects not to accept the contract offer from the personal broker-agent program, then the purchaser may execute the original transaction. (*see, e.g.*, FIGs. 4a-d and page 12, line 9 – page 16, line 8)

Independent claim 14 is directed to a system negotiating improved terms for a product or service being purchased over a computer network. The system of claim 14 includes a computer program and a web site server computer system. The computer program is executable on a client computer system by a purchaser to connect with the

web site server and detect an issuance of a commitment to purchase with associated terms for the product or service. For example, as described on page 3 of the Specification, a personal broker-agent program may detect an issuance of a commitment to purchase by a purchaser over the Internet. The commitment to purchase may be performed by various methods, such as an entry of a credit card number or clicking of a "confirm order" button, which may be detected to indicate the issuance of the commitment to purchase. (*see, e.g.* FIGs. 1-6; page 3, lines 12 – 22; page 12, line 9 – page 13, line 8).

The web site server is operable to receive a notification about the issuance of the commitment to purchase and in response to receiving the notification, make an offer to the purchaser to accept or reject a contract for negotiating improved terms within a specified time. For example, a broker-agent program may analyze the details of the commitment to purchase and determine if the purchase (e.g., based on the type of product service or the dollar amount of the purchase) is of business interest. If the purchase is of interest, then the personal broker-agent program may make an offer to the purchaser to accept or reject a contract to find the specified product with improved terms within a specified time. The purchaser may accept or reject the contract. (*see, e.g.* FIG. 4A)

In response to the purchaser accepting the offer, the web site server is operable to conduct a search for the improved terms within the specified time, receive the improved terms within the specified time and execute the contract. Various methods may be used to search for improved terms. For example, a personal broker-agent program may conduct an auction and/or search the Internet, and other sources for a better deal. When searching the internet, relevant suppliers' web sites and/or product pricing databases may be searched. (*see, e.g.* page 3, line 18 – page 4, line 2; page 15, lines 8-20).

Additionally, the provider of the personal broker-agent program might have established pre-negotiated agreements with preferred suppliers whereby the preferred supplier may guaranty a better price (e.g., by some fixed percentage) than the price included with the commitment to purchase. In one embodiment, the savings may be, in part, passed on to the purchaser and, in part, retained by the provider of personal broker-

agent program as profit. The personal broker-agent program may evaluate results, such as auction responses and/or search results, to determine the best deal. The contract between the purchaser and the personal broker-agent program may then be executed for the best deal. If the purchaser elects not to accept the contract offer from the personal broker-agent program, then the purchaser may execute the original transaction. (*see, e.g.*, FIGs. 4a-d and page 12, line 9 – page 16, line 8)

Independent claim 28 is directed to a medium comprising program instructions for offering to perform comparative Internet shopping in response to detecting the issuance of a commitment to purchase a particular product or service. The program instructions of claim 28 are executable by a computer system to implement the method of claim 1. Thus, the program instructions of claim 28 are executable to implement detecting an issuance of a commitment to purchase (with associated terms) for a product or service being purchased by a purchaser using an Internet web site. For example, a personal broker-agent program may detect an issuance of a commitment to purchase by a purchaser over the Internet. The commitment to purchase may be performed by various methods, such as an entry of a credit card number or clicking of a "confirm order" button, which may be detected to indicate the issuance of the commitment to purchase. (*see, e.g.* FIGs. 1-6; page 3, lines 12 – 22; page 7, lines 6 – 15; page 7, line 26 – page 8, line 26; page 12, line 9 – page 13, line 8).

The program instructions of claim 28 are also executable to implement making an offer to the purchaser to accept or reject a contract for negotiating improved terms within a specified time, in response to detecting the issuance of the commitment to purchase. For example, a broker-agent program may analyze the details of the commitment to purchase and determine if the purchase (e.g., based on the type of product service or the dollar amount of the purchase) is of business interest. If the purchase is of interest, then the personal broker-agent program may make an offer to the purchaser to accept or reject a contract to find the specified product with improved terms within a specified time. The purchaser may accept or reject the contract. (*see, e.g.* FIG. 4A)

If the purchaser accepts the offer the offered contract, the program instructions of claim 28 are also executable to implement conducting a search for the improved terms within the specified time, receiving the improved terms within the specified time and executing the contract. Various methods may be used to search for improved terms. For example, a personal broker-agent program may conduct an auction and/or search the Internet, and other sources for a better deal. When searching the internet, relevant suppliers' web sites and/or product pricing databases may be searched. (*see, e.g.* page 3, line 18 – page 4, line 2; page 15, lines 8-20).

Additionally, the provider of the personal broker-agent program might have established pre-negotiated agreements with preferred suppliers whereby the preferred supplier may guaranty a better price (e.g., by some fixed percentage) than the price included with the commitment to purchase. In one embodiment, the savings may be, in part, passed on to the purchaser and, in part, retained by the provider of personal broker-agent program as profit. The personal broker-agent program may evaluate results, such as auction responses and/or search results, to determine the best deal. The contract between the purchaser and the personal broker-agent program may then be executed for the best deal. If the purchaser elects not to accept the contract offer from the personal broker-agent program, then the purchaser may execute the original transaction. (*see, e.g.*, FIGs. 4a-d and page 12, line 9 – page 16, line 8)

Independent claim 29 is directed to a method that includes detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price. In response to detecting such an action, the method of claim 29 also includes offering the purchaser an opportunity to enter into an alternative contract in which the purchaser agrees to wait a predetermined amount of time in exchange for a possibility of securing a better price for the particular item or service. For example, a personal broker-agent program may detect an issuance of a commitment to purchase by a purchaser over the Internet. The commitment to purchase may be performed by various methods, such as an entry of a credit card number or clicking of a "confirm order" button, which may be detected to

indicate the issuance of the commitment to purchase. (*see, e.g.* FIGs. 1-6; page 3, lines 12 – 22; page 12, line 9 – page 13, line 8).

As with claim 1, the method of claim 29 includes searching for better pricing for the particular item or service and if a better price is found before the predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Thus, the alternative contract may be executed if a better price is found during the predetermined amount of time. (See, e.g. FIGs. 4A and B, page 3, line 24 – page 4, line 8; page 14, lines 12 – 16; page 15, line 22 – page 16, line 3).

Additionally, if a better price is not found before the predetermined about of time expires, the original purchase for the particular item or service over the Internet for the particular price may be executed. Thus, if better terms or pricing cannot be found within the predetermined time specified by the alternative contract, the purchaser is sold the item or service for the price the purchaser originally found. (*See, e.g.* page 4, lines 4-8; page 15, line 22 – page 16, line 3).

Independent claim 40 is directed to a medium comprising program instructions configured to implement the method of claim 29. Thus, the program instructions are configured to implement detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price. In response to detecting such an action, the program instructions are also configured to implement offering the purchaser an opportunity to enter into an alternative contract in which the purchaser agrees to wait a predetermined amount of time in exchange for a possibility of securing a better price for the particular item or service. For example, a personal broker-agent program may detect an issuance of a commitment to purchase by a purchaser over the Internet. The commitment to purchase may be performed by various methods, such as an entry of a credit card number or clicking of a "confirm order" button, which may be detected to indicate the issuance of

the commitment to purchase. (*See, e.g.* FIGs. 1-6; page 3, lines 12 – 22; page 7, lines 6 – 15; page 7, line 26 – page 8, line 26; page 12, line 9 – page 13, line 8).

The program instructions are further configured to implement searching for better pricing for the particular item or service and if a better price is found before the predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Thus, the alternative contract may be executed if a better price is found during the predetermined amount of time. (See, e.g. FIGs. 4A and B, page 3, line 24 – page 4, line 8; page 14, lines 12 – 16; page 15, line 22 – page 16, line 3).

Additionally, if a better price is not found before the predetermined about of time expires, the original purchase for the particular item or service over the Internet for the particular price may be executed. Thus, if better terms or pricing cannot be found within the predetermined time specified by the alternative contract, the purchaser is sold the item or service for the price the purchaser originally found. (*See, e.g.* page 4, lines 4-8; page 15, line 22 – page 16, line 3).

Independent claim 41 is directed to a method that includes detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price. For example, a personal broker-agent program may detect an issuance of a commitment to purchase by a purchaser over the Internet. The commitment to purchase may be performed by various methods, such as an entry of a credit card number or clicking of a "confirm order" button, which may be detected to indicate the issuance of the commitment to purchase. (*See, e.g.* FIGs. 1-6; page 3, lines 12 – 22; page 12, line 9 – page 13, line 8).

The method recited by claim 41 also includes automatically delaying the purchase for a predetermined about of time and searching for a better price for the particular item or service. For example, as described above, a broker-agent may search

various sources for better pricing. For example, a personal broker-agent program may conduct an auction and/or search the Internet, and other sources for a better deal. When searching the Internet, relevant suppliers' web sites and/or product pricing databases may be searched. (*See, e.g.* page 3, line 18 – page 4, line 2; page 15, lines 8-20).

As with the method of claim 29, the method of claim 41 also includes purchasing the particular item or service for the purchaser at a better price and charging the purchaser a new price between the original price and the better price if a better price is found before the predetermined amount of time expires and executing the original purchase for the item or service for the original price if a better price is not found before the predetermined amount of time expires. Various methods may be used to search for improved terms. For example, a personal broker-agent program may conduct an auction and/or search the Internet, and other sources for a better deal. When searching the Internet, relevant suppliers' web sites and/or product pricing databases may be searched. (*See also*, FIG. 4A and 4B; page 3, line 18 – page 4, line 2; page 14, lines 18 – 29; page 15, lines 8-20).

Independent claim 42 is directed to a medium, comprising program instructions for configured to implement the method of claim 41. Thus, the program instructions are configured to implement detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price. For example, a personal broker-agent program may detect an issuance of a commitment to purchase by a purchaser over the Internet. The commitment to purchase may be performed by various methods, such as an entry of a credit card number or clicking of a "confirm order" button, which may be detected to indicate the issuance of the commitment to purchase. (*See, e.g.* FIGs. 1-6; page 3, lines 12 – 22; page 12, line 9 – page 13, line 8).

The program instructions of claim 41 are also configured to implement automatically delaying the purchase for a predetermined about of time and searching for a better price for the particular item or service. For example, as described above, a

broker-agent may search various sources for better pricing. For example, a personal broker-agent program may conduct an auction and/or search the Internet, and other sources for a better deal. When searching the Internet, relevant suppliers' web sites and/or product pricing databases may be searched. (*See, e.g.* page 3, line 18 – page 4, line 2; page 15, lines 8-20).

The program instructions of claim 42 are also configured to implement purchasing the particular item or service for the purchaser at a better price and charging the purchaser a new price between the original price and the better price if a better price is found before the predetermined amount of time expires and executing the original purchase for the item or service for the original price if a better price is not found before the predetermined amount of time expires. As noted above, various methods may be used to search for improved terms. For example, a personal broker-agent program may conduct an auction and/or search the Internet, and other sources for a better deal. When searching the internet, relevant suppliers' web sites and/or product pricing databases may be searched. (*see, e.g.* page 3, line 18 – page 4, line 2; page 15, lines 8-20). (*See also*, FIG. 4A and 4B; page 3, line 18 – page 4, line 2; page 14, lines 18 – 29; page 15, lines 8-20).

Independent claim 44 is directed to a method for performing comparative Internet shopping in response to detecting the issuance of a commitment to purchase a particular product or service, similar to claims 1, 29, and 41. As with the methods of claims 1, 29 and 41, the method of claim 44 includes detecting an action indicating that a purchaser is making a purchase for a particular item or service over the Internet for particular price. For example, a personal broker-agent program may detect an issuance of a commitment to purchase by a purchaser over the Internet. The commitment to purchase may be performed by various methods, such as an entry of a credit card number or clicking of a "confirm order" button, which may be detected to indicate the issuance of the commitment to purchase. (*See, e.g.* FIGs. 1-6; page 3, lines 12 – 22; page 12, line 9 – page 13, line 8).

The method of claims 44 also includes accessing a broker-agent web site for seeking a better price for the item or service within a predetermined amount of time. For example, a database storing product pricing and other product information. (*See also*, FIG. 5; page 14, lines 12 – 29; page 15, line 8 – page 16, line 3).

As with claims 29 and 41, the method of claim 44 also includes purchasing the particular item or service for the purchaser at a better price and charging the purchaser a new price between the original price and the better price if a better price is found before the predetermined amount of time expires and executing the original purchase for the item or service for the original price if a better price is not found before the predetermined amount of time expires. Please refer to the above discussions regarding claims 29 and 41 for a more detailed description of either purchasing the item for the better price (and charging the purchaser a price between the original and better prices) or for the original price. (*See also*, FIG. 4A and 4B; page 3, line 18 – page 4, line 2; page 14, lines 18 – 29; page 15, lines 8-20).

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1.   Claims 1, 3-7, 9-31, 32-35 and 37-44 stand finally rejected under 35 U.S.C. § 102(e) as being anticipated by Schmid (U.S. Publication 2002/0029188).

2.   Claims 2, 8, 31 and 36 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmid in view of Andrews (U.S. Patent 6,285,986).

VII. ARGUMENT

First Ground of Rejection:

Claims 1, 3-7, 9-31, 32-35 and 37-44 stand finally rejected under 35 U.S.C. § 102(e) as being anticipated by Schmid (U.S. Publication 2002/0029188). Appellant traverses this rejection for at least the following reasons. Different groups of claims are addressed under their respective subheadings.

Appellants note that the Examiner's rejection under 35 U.S.C. § 102(e) is improper because the Examiner has not shown that Schmid qualifies as a prior art reference. The Examiner has the burden of proof to produce the factual basis for the rejection. *In re Warner*, 154 USPQ 173, 177 (C.C.P.A. 1967), *cert. denied*, 389 U.S. 1057 (1968). Since the Examiner has not proven that Schmid qualifies as a prior art reference, the Examiner has not met this burden of proof and the rejection is improper. More specifically, the Schmid patent was filed on December 20, 2000, <u>after</u> Appellants' filing date of July 10, 2000. Schmid does claim the benefit of a provisional application filed December 20, 1999. **However, the December 20, 1999 filing date can only be used as Schmid's 35 U.S.C. § 102(e) prior art date for the <u>subject matter that is common to both the Schmid patent and the provisional application.</u>** Since it is common practice for a later filed utility application to include more or different subject matter than its earlier provisional application, it is unclear whether the material in Schmid relied upon by the Examiner was actually present in Schmid's provisional application. Therefore, the Examiner has the burden to show that the subject matter on which the Examiner is relying to reject Appellants' claims is also present in Schmid's provisional application. Until the Examiner has made this showing, the rejection is improper. *See, In re Wertheim*, 209 USPQ 554 (CCPA 1981).

In fact, a brief review of Schmid's provisional application reveals that it varies greatly from Schmid's published utility application. It does not appear that all of the subject matter that the Examiner has relied upon to reject Appellant's claims is present in Schmid's provisional application. The subject matter not present in Schmid's provisional

application cannot be used as prior art. Unless the Examiner can prove that the subject matter on which the Examiner is relying on to reject Appellants' claims is also <u>entirely</u> present in Schmid's provisional application, the rejection is improper. *See, In re Wertheim*, 209 USPQ 554 (CCPA 1981).

Additionally, the Schmid patent is not entitled to the December 20, 1999 date as a section 102(e) prior art date unless at least one claim of the Schmid patent is supported (under 35 U.S.C. § 112) in the provisional application. Under 35 U.S.C. 119(e)(1), a patent is not entitled to its provisional application's filing date as a prior art date unless at least one claim of the published utility application is supported (per 35 U.S.C. § 112) in the provisional application. Upon review of Schmid's provisional application, it does not appear that the provisional application provides full § 112 support for at least one claim of Schmid's published utility application. Therefore, the filing date of Schmid's provisional application cannot be used as the prior art date for Schmid's published utility application. The rejection is improper unless the Examiner can show that Schmid's published application has the necessary claim support in the provisional application to be entitled to the provisional application's filing date as its § 102(e) prior art date. *See also* M.P.E.P. § 2136.03(III, IV).

Since the Examiner has not provided the necessary evidence to show that the Schmid patent is prior art to the present application, the current rejection is improper.

Furthermore, the Examiner has failed to provide a proper *prima facie* rejection for many of Appellants' claims. The Examiner rejects the majority of Appellants' claims together but only addresses certain limitations of the independent claims in the rejection. Thus, the Examiner has failed to consider and/or address the specific language and limitations of many of the claims. For example, the Examiner fails to address the specific limitations of claims 3-7 and 9-13, among others. Moreover, as will be discussed below regarding the individual claims, the cited art fails to disclose the particular subject matter and limitations of Appellants' claims.

Claims 1, 11, 13, 14, 24 and 26 - 28:

Regarding claim 1, Schmid fails to disclose <u>detecting an issuance of a commitment to purchase</u> with associated terms for a product or service <u>being purchased using an Internet web site</u> and in response to said detecting <u>making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time.</u> The Examiner cites the Abstract and paragraphs [0008], [0014], [0017] and [0024 – 0031] of Schmid. However, Schmid fails to disclose anything regarding detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased using an Internet web site and in response to said detecting making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time. In contrast, Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quotes. The borrower selects quotes from the responses and the corresponding lenders are invited to take part in a final quote event in which the best terms from the responding lenders are displayed to all of the lenders and each lender is invited to improve their corresponding quote. The borrower then selects a final quote. *See, e.g.,* Schmid, Abstract and paragraph [0008]. **Schmid is not concerned with and does not disclose detecting a commitment to purchase a product or service being purchased using an Internet web site, as recited in Appellant's claim.** Instead, Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders.

In contrast to Schmid, Appellant's claimed invention relates to offering a purchaser a contract to negotiate improved terms for a product or service that the purchaser *has committed to purchase with associate terms using an Internet web site.* For example, once a purchaser has made a decision to buy a specific product or service over the Internet, the purchaser may use the services of a broker-agent program to attempt to beat the specific price within a specifiable time window, in one embodiment described in Appellant's specification.

Schmid's system does not involve detecting a commitment to purchase a product or service using an Internet web site, and making an offer to the purchaser to accept or reject a contract for negotiating improved terms for the product or service being purchased, as recited in Appellant's claim. The borrower of Schmid's system has only committed to using Schmid's loan-finding service to obtain a loan. However, Schmid's system does not offer a contract to the potential borrower to negotiate improved terms for using Schmid's loan-finding service. Providing an electronic forum in which a potential borrow may view and select from multiple lending offers does not disclose making an offer to a purchaser to accept or reject a contract for negotiating improved terms for a product or service being purchased over the Internet in response to detecting an issuance of a commitment to purchase the product or service using an Internet web site.

Furthermore, Schmid fails to disclose conducting a search for the improved terms within the specified time if the purchaser accepts an offer. In fact, Schmid does not even disclose the purchaser accepting an offer for a contract for negotiating improved terms for a product or service being purchased over the Internet with a specified time.

None of the Examiner's citations refers to a buyer accepting an offer for a contract for negotiating improved terms for a product or service being purchased over the Internet within a specified time. Presumably, the Examiner is relying on the borrower in Schmid's system accepting one of the loan offers (paragraph [0046]). However, none of the loan offers can be considered a offer to accept or reject a contract for negotiating improved terms for product or service already committed to being purchased over the Internet within a specified time.

Schmid's teaching regarding a potential borrower executing the Exclusive Engagement Agreement also cannot be considered to disclose the purchaser accepting an offer to accept or reject a contract for negotiating improved terms for a product or service being purchased over the Internet within a specified time (paragraph [0024]). Schmid's

Exclusive Engagement Agreement is a contract with a company providing the Schmid's loan-finding service. Moreover, the Exclusive Engagement Agreement is clearly not a contract for negotiating improved terms for a produce or service being purchased over the Internet. Instead, Schmid's Exclusive Engagement Agreement is a contract to use the interactive on-line, real time bidding model of Schmid's invention to *potentially accept a loan*. When a potential borrower executes Schmid's Exclusive Engagement Agreement, no product or service is currently being purchased over the Internet except the actual Exclusive Engagement Agreement itself.

Thus, for at least the reasons presented above, the rejection of claim 1 is not supported by the cited art and removal thereof is respectfully requested.

Claims 3 and 16:

In regard to claim 3, Schmid fails to disclose that **detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises <u>detecting the purchaser viewing a particular web page.</u>** The Examiner does not address this limitation nor does the Examiner cite any portion of Schmid regarding the rejection of claim 3. In fact, the Examiner has completely ignored the limitations of claim 3.

Nowhere does Schmid mention that detecting an issuance of a commitment to purchase comprises *detecting* a purchaser viewing a particular web page. As noted above regarding claim 1, Schmid teaches a system in which lenders provide quotes for a loan to a borrower. However, Schmid's system does not in any way teach or suggest detecting a purchaser viewing a particular web page as part of detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site.

Thus, for at least the reasons above, the rejection of claim 3 is not supported by the cited art and removal thereof is respectfully requested.

Claims 4 and 17:

Regarding claim 4, Schmid fails to disclose that detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises <u>detecting said purchaser accessing a particular URL</u>. As with the rejection of claim 3, discussed above, the Examiner does not address this limitation of claim 4. Instead, the Examiner merely lists claim 4 as rejected while failing to cite any portion of Schmid regarding the subject matter of claim 4. Schmid fails to mention anything regarding detecting a purchaser accessing a particular URL as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site. Furthermore, as described above regarding claim 1, **Schmid is not concerned with and does not disclose detecting a commitment to purchase a product or service being purchased using an Internet web site, as recited in Appellant's claim.** Instead, Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders.

Thus, the rejection of claim 4 is not supported by the cited art and removal thereof is respectfully requested.

Claims 5 and 17:

In regards to claim 5, Schmid fails to disclose that **detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises <u>detecting said purchaser clicking an icon to confirm order</u>**. As with claims 3 and 4, the Examiner does not address the particular subject matter and limitations of claim 5. Nor does the Examiner cite any portion of Schmid in rejecting claim 5. Additionally, Schmid fails to mention anything regarding detecting a purchaser clicking an icon to confirm an order as part of detecting an issuance of a commitment to purchaser a product or service being

purchased using an Internet web site. Schmid does not mention anything about clicking an icon to confirm an order.

Therefore, the rejection of claim 5 is not supported by the cited art and removal thereof is respectfully requested.

Claims 6 and 19:

Regarding claim 6, Schmid fails to disclose that **making an offer to the purchaser includes displaying the contract on a screen of a computer system used by the purchaser to purchase the product over the Internet**. The Examiner has not cited any portion of Schmid to support the rejection of claim 6. Schmid does not mention anything about displaying, on a screen of a computer system used by purchaser, a contract for negotiating improved terms within a specified time as part of making an offer to the purchaser to accept or reject the contract. As discussed above regarding claim 1, Schmid fails to disclose making such an offer to accept or reject a contract for negotiating improved terms within a specified time.

Thus, the rejection of claim 6 is not supported by the cited art and removal thereof is respectfully requested.

Claims 7 and 20:

In regards to claim 7, Schmid fails to disclose **executing the commitment to purchase if the purchaser rejects the contract**. The Examiner fails to address this limitation in the rejection of claim 7. In fact, the Examiner fail to discuss or cite any portion of cited art in rejecting claim 7. Schmid's system does not include executing the commitment to purchase a product or service purchased by a purchaser using an Internet web site if the purchase rejects a contract for negotiating improved terms within a specified time. Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders.

The rejection of claim 7 is not supported by the cited art and removal thereof is respectfully requested.

Claims 9 and 22:

Regarding claim 9, Schmid fails to disclose **that the improved terms comprise a better price, or a better delivery, or a better warranty or a better return policy compared to the terms associated with said commitment to purchase**. As with the rejection of many of the other claims, the Examiner has failed to provide a proper rejection of claim 9. The Examiner does not address the specific language, subject matter and/or limitations of claim 9.

Furthermore, Schmid fails to disclose anything regarding improved terms including a better price, a better delivery, a better warranty or a better return policy *compared to the terms associated with the commitment to purchase.* Presumably the Examiner is relying on the fact that Schmid teaches allowing a borrower to select from among multiple lenders to obtain a loan. However, in Schmid, the various terms provided by the lenders are not improved terms compared to terms associated with a commitment to purchase. In Schmid's system, the borrower has not committed to purchase a product or service with associated terms compared to which the lender's term may be considered improved terms. Providing an electronic forum in which a potential borrow may view and select from multiple lending offers does not disclose improved terms including a better price, a better delivery, a better warranty or a better return policy *compared to the terms associated with the commitment to purchase.*

Thus, for at least the reasons above, the rejection of claim 9 is not supported by the cited art and removal thereof is respectfully requested.

Claims 10 and 23:

In regards to claim 10, Schmid fails to disclose **reading information associated with commitment to purchase, determining if the commitment to purchase represents an area of interest** for an improved terms service provider and if **the commitment to purchase represents an area of interest** for the improved terms service provider, **making the offer to the purchaser**. As with many others of the claims, the Examiner has failed to consider and/or address the specific language and limitations of claim 10. The Examiner has not cited any portion of Schmid in rejection claim 10. Thus, the Examiner has failed to provide a *prima facie* rejection of claim 10.

Moreover, Schmid fails to disclose any of the limitations of claim 10. As described above, Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quotes. There is nothing in Schmid's system that can be considered reading information associated with a purchasers commitment to purchase a product or service with associated terms using an Internet web site. Additionally, Schmid does not disclose determining whether a purchaser's commitment to purchase the product or service represents an area of interest for an improved terms service provider. Schmid is not concerned with determining whether a purchaser's commitment to purchase represents an area of interest for an improved terms service provider.

Thus, the rejection of claim 10 is not supported by the cited art and removal thereof is respectfully requested.

Claims 12 and 25:

Regarding claim 12, Schmid fails to disclose that **executing the contract includes entering a legal contract with the purchaser to supply the product under the improved terms**. The Examiner has failed to address or consider this limitation of claim 12. The Examiner has not cited any portion of Schmid in rejection claim 12 that

has anything to do with entering a legal contract with the purchaser to supply the product under improved terms. Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quotes and the borrower may select one of the submitted quotes. In order to anticipate claim 12, Schmid's system would have to include entering a legal contract with a purchaser to supply a product that the purchaser already committed to purchase. However, this does not occur in Schmid's system. The borrower of Schmid's system only commits to using Schmid's system and Schmid does not teach improving the terms for the obtaining the lender's quotes. Thus, in Schmid's system there is not legal contract with a purchaser to supply a product under improved terms.

The rejection of claim 12 is not supported by the cited art and removal thereof is respectfully requested.

Claim 15:

In regards to claim 15, Schmid fails to disclose a computer program configured to **detect the issuance of the commitment to purchase by <u>detecting the purchaser entering a credit card number or a pre-paid account number of a gift-certificate number</u>**. The Examiner has failed to provide a proper prima facie rejection of claim 15. Firstly, the Examiner merely lists claim 15 as rejected, along with claims 1, 3-7, 9-31, 32-35 and 37-44, without addressing the specific limitations of claim 15. Secondly, in regard to claim 2, which recites similar subject matter to claim 15, the Examiner admits that Schmid fails to teach or suggest where detecting the issuance of the commitment to purchase includes detecting the purchaser entering a credit card number or a pre-paid account number or a gift certificate number. In the §103 rejection of claim 2, discussed below under the second ground of rejection, the Examiner relies on Andrews. Thus, the §102 rejection of claim 15, which recites similar limitations to subject matter recited by claim 2, is clearly improper. Thus, the rejection of claim 15 is not supported by the cited art and removal thereof is respectfully requested.

Claim 21:

In regards to claim 21, Schmid fails to disclose that **the commitment to purchase includes a purchase order for which payment has been guaranteed by the purchaser**. The Examiner has failed to provide a proper prima facie rejection of claim 21. Firstly, the Examiner does not cite any portion Schmid regarding the rejection of claim 21. Nor does the Examiner address the specific limitations of claim 21. Moreover, Schmid makes no mention of any purchase order for which payment has been guaranteed by the purchaser.

Additionally, the Examiner admits that Schmid fails to teach or suggest that the commitment to purchase includes a purchase order for which payment has been guaranteed by the purchaser (*see* Examiner's rejection under § 103 of claim 8, which recites similar subject matter to claim 15). **Thus, the §102 rejection of claim 21, which recites similar limitations to subject matter recited by claim 8, is clearly improper.**

For at least the reasons above, the rejection of claim 21 is not supported by the cited art and removal thereof is respectfully requested.

Claims 29 and 38-40:

In regards to claim 29, Schmid fails to disclose **detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet** *for a particular price.* As described above regarding claim 1, Schmid fails to disclose anything regarding detecting that a purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price. The Examiner cites the Abstract and paragraphs [0008], [0014], [0017] and [0024 – 0031] of Schmid. However, none of the cited passages describes detecting an action indicating that the purchaser is about to make a purchase for a particular time or service over the Internet for a particular price. Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are

invited to submit quotes. The borrower selects quotes from the responses and the corresponding lenders are invited to take part in a final quote event in which the best terms from the responding lenders are displayed to the lenders and each lender is invited to improve their corresponding quote. The borrower then selects a final quote. *See, e.g.,* Schmid, Abstract and paragraph [0008].

Schmid is not concerned with and does not disclose detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price, as recited in Appellant's claim. Instead, Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders. The borrower of Schmid's system has only committed to using Schmid's loan-finding service to obtain a loan. However, Schmid's system does not offer a contract to the potential borrower to negotiate improved terms for using Schmid's loan-finding service.

Schmid's system clearly does not include detecting that a purchaser is about to make an original purchase *for a particular price.* In contract, Schmid teaches requesting quotes from various lenders from which the burrower selects a final quote for a loan. Providing an electronic forum in which a potential borrow may view and select from multiple lending offers does not disclose making an offer to a purchaser to accept or reject a contract for negotiating improved terms for a product or service being purchased over the Internet in response to detecting an issuance of a commitment to purchase the product or service using an Internet web site.

In further regard to claim 29, Schmid fails to disclose <u>offering the purchaser an</u> <u>opportunity to enter into an alternative contract</u> in which the <u>purchaser agrees to wait a</u> <u>predetermined amount of time</u> in exchange for a possibility of securing a better price for said particular item or service. **The Examiner has not made any arguments, nor cited any passage of prior art, regarding this limitation of claim 29.** Instead, the Examiner has merely listed claim 29 with the rejection of claim 1, even though claim 1 and claim 29 recite different limitations. **Therefore, the Examiner has not stated a *prima facie***

rejection for claim 29. Moreover, there is no description in Schmid that discloses offering a purchaser an opportunity to enter into an alternative contract in which the purchaser agrees to wait a predetermined amount of time in exchange for a possibility of securing a better price for a particular item or service.

Furthermore, the cited art fails disclose if said better price is found before said predetermined amount of time expires, <u>purchasing the particular item or service for the purchaser at the better price</u> and charging the purchaser <u>a new price between said particular price and said better price</u>. Again, the Examiner has not made any arguments, nor cited any passage of prior art, regarding this limitation of claim 29. Instead, as noted above, the Examiner has merely listed claim 29 with the rejection of claim 1. There is simply no description in Schmid regarding purchasing an item at a better price and charging the purchaser a price between the better price and the particular price. Schmid's system for allowing a potential borrower to select from among multiple loans has no relevance with making such a purchase at a better price and charging the purchaser a new price between the better price and an original price.

Claim 30:

Regarding claim 30, Schmid fails to disclose wherein if the original purchase is not available after the searching is complete, purchasing the particular item for the purchaser at another price and charging the purchase the particular price.

Claim 31:

In regards to claim 31, Schmid fails to where said **detecting the issuance of the commitment to purchase includes** <u>**detecting the purchaser entering a credit card number or a pre-paid account number of a gift-certificate number**</u>. The Examiner has failed to provide a proper prima facie rejection of claim 31. Firstly, the Examiner merely lists claim 15 as rejected, along with claims 1, 3-7, 9-31, 32-35 and 37-44, without addressing the specific limitations of claim 31. Secondly, in regard to claim 2,

which recites similar subject matter to claim 31, the Examiner admits that Schmid fails to teach or suggest where detecting the issuance of the commitment to purchase includes detecting the purchaser entering a credit card number or a pre-paid account number or a gift certificate number. In the §103 rejection of claim 2, discussed below under the second ground of rejection, the Examiner relies on Andrews. **Thus, the §102 rejection of claim 15, which recites similar limitations to subject matter recited by claim 2, is clearly improper, especially since the Examiner fails to address the limitations of claim 31 in the §102 rejection.**

Thus, the rejection of claim 31 is not supported by the cited art and removal thereof is respectfully requested.

Claim 32:

In regards to claim 32, Schmid fails to disclose that **detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises <u>detecting the purchaser viewing a particular web page.</u>** The Examiner does not address this limitation nor does the Examiner cite any portion of Schmid regarding the rejection of claim 32. Nowhere does Schmid mention that detecting an issuance of a commitment to purchase comprises *detecting* a purchaser viewing a particular web page. As noted above regarding claims 1 and 29, Schmid teaches a system in which lenders provide quotes for a loan to a borrower. However, Schmid's system does not in any way teach or suggest detecting a purchaser viewing a particular web page as part of detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site.

Thus, for at least the reasons above, the rejection of claim 32 is not supported by the cited art and removal thereof is respectfully requested

Claim 33:

Regarding claim 33, Schmid fails to disclose that detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises <u>detecting said purchaser accessing a particular URL</u>. As with the rejection of claim 32, discussed above, the Examiner does not address this limitation of claim 33. Instead, the Examiner merely lists claim 33 as rejected while failing to cite any portion of Schmid regarding the subject matter of claim 33. Schmid fails to mention anything regarding detecting a purchaser accessing a particular URL as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site. Furthermore, as described above regarding claims 1 and 29, **Schmid is not concerned with and does not disclose detecting a commitment to purchase a product or service being purchased using an Internet web site, as recited in Appellant's claim.** Instead, Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders.

Thus, the rejection of claim 33 is not supported by the cited art and removal thereof is respectfully requested.

Claim 34:

In regards to claim 34, Schmid fails to disclose that **detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises <u>detecting said purchaser clicking an icon to confirm order</u>**. As with claims 32 and 33, the Examiner does not address the particular subject matter and limitations of claim 34. Nor does the Examiner cite any portion of Schmid in rejecting claim 34. Additionally, Schmid fails to mention anything regarding detecting a purchaser clicking an icon to confirm an order as part of detecting an issuance of a commitment to purchaser a product or service being purchased using an Internet web site. Schmid does not mention anything about clicking

an icon to confirm an order. Therefore, the rejection of claim 34 is not supported by the cited art and removal thereof is respectfully requested.

Claim 35:

Regarding claim 35, Schmid fails to disclose that **making an offer to the purchaser includes <u>displaying the contract on a screen of a computer system used by the purchaser</u> to purchase the product over the Internet**. The Examiner has not cited any portion of Schmid to support the rejection of claim 35. Schmid does not mention anything about displaying, on a screen of a computer system used by purchaser, a contract for negotiating improved terms within a specified time as part of making an offer to the purchaser to accept or reject the contract. As discussed above regarding claim 1, Schmid fails to disclose making such an offer to accept or reject a contract for negotiating improved terms within a specified time.

Thus, the rejection of claim 35 is not supported by the cited art and removal thereof is respectfully requested.

Claim 37:

In regards to claim 10, Schmid fails to disclose **<u>reading information associated with commitment to purchase</u>, <u>determining if the commitment to purchase represents an area of interest</u> for an improved terms service provider and <u>if the commitment to purchase represents an area of interest</u> for the improved terms service provider, <u>making the offer to the purchaser</u>**. As with many others of the claims, the Examiner has failed to consider and/or address the specific language and limitations of claim 10. The Examiner has not cited any portion of Schmid in rejection claim 10. Thus, the Examiner has failed to provide a *prima facie* rejection of claim 10.

Moreover, Schmid fails to disclose any of the limitations of claim 10. As described above, Schmid teaches a method for negotiating loans on behalf of a borrower

in which a plurality of lenders are invited to submit quotes. There is nothing in Schmid's system that can be considered reading information associated with a purchasers commitment to purchase a product or service with associated terms using an Internet web site. Additionally, Schmid does not disclose determining whether a purchaser's commitment to purchase the product or service represents an area of interest for an improved terms service provider. Schmid is not concerned with determining whether a purchaser's commitment to purchase represents an area of interest for an improved terms service provider.

Thus, the rejection of claim 10 is not supported by the cited art and removal thereof is respectfully requested.

Claims 41, 42 and 43:

In regards to claim 41, Schmid fails to disclose **detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet** *for a particular price.* As described above regarding claim 291, Schmid fails to disclose anything regarding detecting that a purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price. The Examiner cites the Abstract and paragraphs [0008], [0014], [0017] and [0024 – 0031] of Schmid. Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quotes. The borrower selects quotes from the responses and the corresponding lenders are invited to take part in a final quote event in which the best terms from the responding lenders are displayed to the lenders and each lender is invited to improve their corresponding quote. The borrower then selects a final quote. *See, e.g.,* Schmid, Abstract and paragraph [0008]. **Schmid is not concerned with and does not disclose detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price, as recited in Appellant's claim.** Instead, Schmid teaches a system in which potential borrowers may

select from among multiple loans being offered by lenders. The borrower of Schmid's system has only committed to using Schmid's loan-finding service to obtain a loan. However, Schmid's system does not offer a contract to the potential borrower to negotiate improved terms for using Schmid's loan-finding service.

Schmid's system clearly does not include detecting that a purchaser is about to make an original purchase *for a particular price.* In contract, Schmid teaches requesting quotes from various lenders from which the burrower selects a final quote for a loan. Providing an electronic forum in which a potential borrow may view and select from multiple lending offers does not disclose making an offer to a purchaser to accept or reject a contract for negotiating improved terms for a product or service being purchased over the Internet in response to detecting an issuance of a commitment to purchase the product or service using an Internet web site.

In further regard to claim 41, Schmid fails to teach or suggest <u>automatically delaying the purchase</u> for a predetermined amount of time. Once again, the Examiner fails to cite any portion of the cited art that mentions anything regarding automatically delaying a purchase for a predetermined amount of time. **In fact, the Examiner has completely ignored this limitation of claim 41 and has, instead, merely listed claim 41 with his rejection of claim 1.** Schmid's loan competition system has nothing to do with delaying a purchase while a search is conducted for better terms. Nowhere does Schmid describe automatically delaying a purchase (that a purchaser is about to make for a particular item or service over the Internet for a particular price) for a predetermined about of time. Presumably the Examiner is relying upon the fact that Schmid teaches waiting a certain amount of time for lenders to provide loan quotes. However, allowing time for lenders to provide loan quotes is not the same as automatically delaying an original purchase that a purchaser is about to make for a predetermined about of time. Providing an online forum for collecting lending quotes does not disclose anything regarding automatically delaying a purchase for a predetermined about of time.

Furthermore, the cited art fails disclose **if said better price is found before said predetermined amount of time expires, <u>purchasing the particular item or service for the purchaser at the better price</u> and charging the purchaser <u>a new price between said particular price and said better price</u>**. Again, the Examiner has not made any arguments, nor cited any passage of prior art, regarding this limitation of claim 29. Instead, as noted above, the Examiner has merely listed claim 29 with the rejection of claim 1. There is simply no description in Schmid regarding purchasing an item at a better price and charging the purchaser a price between the better price and the particular price. Schmid's system for allowing a potential borrower to select from among multiple loans has no relevance with making such a purchase at a better price and charging the purchaser a new price between the better price and an original price.

Additionally, Schmid fails to disclose **if said better price is not found before the predetermined amount of time expires, executing the original purchase for the particular item or service over the Internet for the particular price.** Once again the Examiner has failed to provide a proper, *prima facie* rejection. The Examiner has improperly failed to consider this limitation of claim 41. Moreover, Schmid does not teach anything regarding executing the original purchase for the particular item or service over the Internet for the particular price if the better price is not found before the predetermined amount of time expires. Schmid teaches that the borrower selects a final quote from among a number of lender quotes for a loan. Thus, in Schmid there is no original purchase to execute if a better price is not found before a predetermined amount of time expires.

Claim 44:

Regarding claim 44, Schmid fails to disclose **detecting an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or service over the Internet for a particular price**. As described above regarding claims 29 and 41, Schmid's system does not involve detecting an action indicating that a purchaser is making a purchase for a particular item or service over the Internet for a

particular price. Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quotes. The borrower selects quotes from the responses and the corresponding lenders are invited to take part in a final quote event in which the best terms from the responding lenders are displayed to the lenders and each lender is invited to improve their corresponding quote. Please see the arguments regarding claims 1, 29 and 41 above for a more detailed discussion of Schmid's failure to detect an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or service over the Internet for a particular price.

In further regard to claim 44, Schmid further fails to disclose in response to **detecting an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or server of the Internet for a particular price, <u>accessing a broker-agent web site for seeking a better price</u> for the particular item or service within a predetermined amount of time**. Once again, the Examiner fails to cite any portion of the cited art that mentions anything regarding accessing a broker-agent web site for seeking a better price. **In fact, the Examiner has completely ignored this limitation of claim 44** and has merely listed claim 44 with his rejection of claim 1. In the loan competition system of Schmid, a list of potential lenders is prepared and a potential borrower selects from among them. Schmid's system does not include accessing a broker-agent web site in response to detecting an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or server of the Internet for a particular price. There is nothing about Schmid's system that discloses seeking a better price for a particular item or service by accessing a broker-agent web site.

Additionally, Schmid fails to disclose **if said better price is not found before the predetermined amount of time expires, executing the original purchase for the particular item or service over the Internet for the particular price.** Once again the Examiner has failed to provide a proper, *prima facie* rejection. The Examiner has improperly failed to consider this limitation of claim 44. Schmid does not teach anything

regarding executing the original purchase for the particular item or service over the Internet for the particular price if the better price is not found before the predetermined amount of time expires. Schmid teaches that the borrower selects a final quote from among a number of lender quotes for a loan. Thus, in Schmid there is no original purchase to execute if a better price is not found before a predetermined amount of time expires.

Moreover, since the Examiner has not mentioned either of the limitations discussed here in his remarks, he has failed to state a *prima facie* rejection for claim 44.

Second Ground of Rejection:

Claims 2, 8, 31 and 36 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmid in view of Andrews (U.S. Patent 6,285,986). Appellant traverses this rejection for at least the following reasons. Different groups of claims are addressed under their respective subheadings.

Claim 2:

In regards to claim 2, Schmid in view of Andrews fails to teach or suggest detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site, wherein said detecting comprises **detecting the purchaser entering a credit card number or a pre-paid account number or a gift certificate**.

The Examiner relies on Andrews and cites column 2, lines 37-48. The cited passage is part of Andrews' background section describing various aspects of online purchasing. At the cited passage, Andrews teaches that when accessing retail-oriented internet sites, a user may decide to purchase a product and may enter "payment and shipping information notifying the internet site how the user is going to pay for the product and to where the user would like the product shipped" (Andrews, column 2, lines

41-44). However, the mere mention in Andrews that a user may "enter payment and shipping information" when purchasing an item, fails to teach or suggest the specific limitation of claim 2. Neither Schmid nor Andrews, whether considered singly or in combination, makes any mention of a credit card number, a pre-paid account number, or a gift certificate number. Moreover, neither Schmid nor Andrews, whether considered singly or in combination, teaches or suggests anything regarding detecting a purchaser entering a credit card number, a pre-paid account number or a gift certificate number as part of detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site.

Without some specific teaching or suggestion in either Schmid or Andrews regarding detecting a purchaser entering a credit card, pre-paid account or gift certificate number as part of detecting an issuance of a commitment to purchase a produce or service, the Examiner's combination of cited art cannot be said to teach or suggest the limitation of claim 2.

Furthermore, the Examiner has not provided a proper motivation to combine the teachings of Schmid and Andrews. The Examiner states that it would have been obvious to combine Schmid and Andrews, "since the form of payment information can also include payment of credit card or gift certificate or account number." However, the Examiner's motivation has nothing do with combining Schmid and Andrews. Schmid's system does not include the entering of payment information. In fact, as noted above, Schmid's system includes finding better *loan* offers for a borrower. The borrower does not enter payment information to purchase the loan in Schmid. Moreover, as noted above, Andrews does not mention anything regarding detecting the entry of credit card, gift certificates or account numbers. The Examiner's motivation is nothing more that a statement that Andrews' payment information could include credit card or gift certificate or account numbers. Thus, the Examiner's stated motivation has nothing to do with combining Schmid and Andrews.

Thus, the rejection of claim 2 is not supported by the cited art and removal thereof is respectfully requested.

Claim 8:

The Examiner has failed to provide a *prima facie* rejection of claim 8. The Examiner has completely failed to address or consider the specific language and limitation of claim 8. Instead, the Examiner merely rejects claim 8 along with claim 2 even though claim 8 recites different subject matter than claim 2.

In regards to claim 8, Schmid in view of Andrews fails to teach or suggest where **the commitment to purchase comprises a <u>purchase order for which payment has been guaranteed </u>by the purchaser**. The Examiner relies on Andrews, citing column 2, lines 37-49. As described above regarding claim 2, the cited passage teaches that when accessing retail-oriented internet sites, a user may decide to purchase a product and may enter "payment and shipping information notifying the internet site how the user is going to pay for the product and to where the user would like the product shipped" (Andrews, column 2, lines 41-44). However, Andrews, even if combined with Schmid, fails to make any mention of a purchaser order for which payment has been guaranteed by the purchaser. Instead, the cited passage merely describes a user entering payment information when purchasing a product via "retail-oriented internet sites". However, purchase orders are not typically used to purchase items via retail-oriented internet sites. Andrews makes no mention of any purchaser orders. Nor does Andrews, whether considered singly or in combination with Schmid, mention anything about detecting an issuance of a commitment to purchase a product or service, where the commit to purchase includes a purchase order for which payment has been guaranteed by the purchaser.

Thus, not only has the Examiner failed to consider the specific language and subject matter of claim 8, the cited art, even when combined as the Examiner suggests, fails to teach or suggest the specific limitations of claim 8. Furthermore, the Examiner

has failed to provide a proper motivation for combining Schmid and Andrews. The Examiner's stated motivation has nothing to do with the subject matter and limitations of claim 8.

For at least the reasons above, the rejection of claim 8 is not supported by the cited art and removal thereof is respectfully requested.

Claim 31:

In regards to claim 31, Schmid in view of Andrews fails to teach or suggest detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site, wherein said detecting comprises **detecting the purchaser entering a credit card number or a pre-paid account number or a gift certificate**.

The Examiner relies on Andrews and cites column 2, lines 37-48. The cited passage is part of Andrews' background section describing various aspects of online purchasing. At the cited passage, Andrews teaches that when accessing retail-oriented internet sites, a user may decide to purchase a product and may enter "payment and shipping information notifying the internet site how the user is going to pay for the product and to where the user would like the product shipped" (Andrews, column 2, lines 41-44). However, the mere mention in Andrews that a user may "enter payment and shipping information" when purchasing an item, fails to teach or suggest the specific limitation of claim 31. Neither Schmid nor Andrews, whether considered singly or in combination, makes any mention of a credit card number, a pre-paid account number, or a gift certificate number. Moreover, neither Schmid nor Andrews, whether considered singly or in combination, teaches or suggests anything regarding detecting a purchaser entering a credit card number, a pre-paid account number or a gift certificate number as part of detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site.

Without some specific teaching or suggestion in either Schmid or Andrews regarding detecting a purchaser entering a credit card, pre-paid account or gift certificate number as part of detecting an issuance of a commitment to purchase a produce or service, the Examiner's combination of cited art cannot be said to teach or suggest the limitation of claim 31.

Furthermore, the Examiner has not provided a proper motivation to combine the teachings of Schmid and Andrews. The Examiner states that it would have been obvious to combine Schmid and Andrews, "since the form of payment information can also include payment of credit card or gift certificate or account number." However, the Examiner's motivation has nothing do with combining Schmid and Andrews. Please refer to the arguments above regarding the rejection of claim 2 for a more detailed discussion regarding the Examiner's failure to provide a proper motivation to combine Schmid and Andrews.

For at least the reasons above, the rejection of claim 31 is not supported by the cited art and removal thereof is respectfully requested.

Claim 36:

The Examiner has failed to provide a *prima facie* rejection of claim 36. As with the rejection of claim 8, described above, the Examiner has completely failed to address or consider the specific language and limitation of claim 36. Instead, the Examiner merely rejects claim 36 along with claim 2 even though claim 36 recites different subject matter than claim 2.

In regards to claim 36, Schmid in view of Andrews fails to teach or suggest where **the commitment to purchase comprises a <u>purchase order for which payment has been guaranteed</u> by the purchaser**. The Examiner relies on Andrews, citing column 2, lines 37-49. As described above regarding claim 2, the cited passage teaches that when accessing retail-oriented internet sites, a user may decide to purchase a product and may

enter "payment and shipping information notifying the internet site how the user is going to pay for the product and to where the user would like the product shipped" (Andrews, column 2, lines 41-44). However, Andrews, even if combined with Schmid, fails to make any mention of a purchaser order for which payment has been guaranteed by the purchaser. Instead, the cited passage merely describes a user entering payment information when purchasing a product via "retail-oriented internet sites". However, purchase orders are not typically used to purchase items via retail-oriented internet sites. Andrews makes no mention of any purchaser orders. Nor does Andrews, whether considered singly or in combination with Schmid, mention anything about detecting an issuance of a commitment to purchase a product or service, where the commit to purchase includes a purchase order for which payment has been guaranteed by the purchaser.

Not only has the Examiner failed to consider the specific language and subject matter of claim 36, the cited art, even when combined as the Examiner suggests, fails to teach or suggest the specific limitations of claim 36. Thus, the rejection of claim 36 is not supported by the cited art and removal thereof is respectfully requested.

CONCLUSION

For the foregoing reasons, it is submitted that the Examiner's rejection of claims 1-44 was erroneous, and reversal of his decision is respectfully requested.

No fee should be due for this Appeal Brief since this is a reinstatement of a previous appeal for which the Appeal Brief Fee was already paid. *See* M.P.E.P. § 1207.04. However, the Commissioner is authorized to charge any fees (small entity) that may be due to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5596-00300/RCK.

Respectfully submitted,

/Robert C. Kowert/

Robert C. Kowert, Reg. # 39,255
Attorney for Appellant

Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
(512) 853-8850

Date: November 13, 2006

VIII. CLAIMS APPENDIX

The claims on appeal are as follows.

1.   A method for negotiating improved terms for a product or service being purchased over the Internet, the method comprising:

      detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site;

      in response to said detecting, making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time;

      if said purchaser accepts said offer:

            conducting a search for said improved terms within said specified time;

            receiving said improved terms within said specified time; and

            executing said contract.

2.   The method of claim 1, wherein said detecting comprises detecting said purchaser entering a credit card number or a pre-paid account number or a gift certificate number.

3.   The method of claim 1, wherein said detecting comprises detecting said purchaser viewing a particular web page.

4.   The method of claim 1, wherein said detecting comprises detecting said purchaser accessing a particular URL.

5.   The method of claim 1, wherein said detecting comprises detecting said purchaser clicking an icon to confirm order.

6.   The method of claim 1, wherein said making an offer to said purchaser comprises displaying said contract on a screen of a computer system used by said purchaser to purchase said product over the Internet.

7.   The method of claim 1, wherein if said purchaser rejects said contract: executing said commitment to purchase.

8.   The method of claim 1, wherein said commitment to purchase comprises a purchase order for which payment has been guaranteed by said purchaser.

9.   The method of claim 1, wherein said improved terms comprise a better price, or a better delivery, or a better warranty or a better return policy compared to the terms associated with said commitment to purchase.

10.   The method of claim 1, wherein making an offer to said purchaser comprises:

reading information associated with commitment to purchase;

determining if commitment to purchase represents an area of interest for an improved terms service provider;

if commitment to purchase represents an area of interest for said improved terms service provider:

making said offer to said purchaser.

11.   The method of claim 1, wherein conducting said search for said improved terms comprises conducting an auction amongst a plurality of suppliers for said product.

12.   The method of claim 1, wherein executing said contract comprises entering a legal contract with said purchaser to supply said product under said improved terms.

13.   The method of claim 1, wherein conducting said search for said improved terms comprises searching a database of preferred suppliers for said product.

14.   A system for negotiating improved terms for a product or service being purchased over a computer network, the system comprising:

a computer program;

a web site server computer system;

wherein said computer program is executable on a client computer system by a purchaser to connect with the web site server and detect an issuance of a commitment to purchase with associated terms for said product or service; and

wherein the web site server is operable to:

receive a notification about said issuance of said commitment to purchase;

in response to receiving said notification, make an offer to said purchaser to accept or reject a contract for negotiating improved terms within a specified time; and

in response to said purchaser accepting said offer:

conduct a search for said improved terms within said specified time;

receive said improved terms within said specified time;

execute said contract.

15.   The system of claim 14, wherein said computer program is configured to detect the issuance of the commitment to purchase by detecting said purchaser entering a credit card number or a pre-paid account number or a gift certificate number.

16.   The system of claim 14, wherein said computer program is configured to detect the issuance of the commitment to purchase by detecting said purchaser viewing a particular web page.

17.   The system of claim 14, wherein said computer program is configured to detect the issuance of the commitment to purchase by detecting said purchaser accessing a particular URL.

18.   The system of claim 14, wherein said computer program is configured to detect the issuance of the commitment to purchase by detecting said purchaser clicking an icon to confirm order.

19.   The system of claim 14, wherein said web site server is configured to make the offer to said purchaser by displaying said contract on a screen of a computer system used by said purchaser to purchase said product over the Internet.

20.   The system of claim 14, wherein if said purchaser rejects said contract; the computer program is configured to execute said commitment to purchase.

21.   The system of claim 14, wherein said commitment to purchase comprises a purchase order for which payment has been guaranteed by said purchaser.

22.   The system of claim 14, wherein said improved terms comprise one or more of the following: a better price, a better delivery, a better warranty, or a better return policy, as compared to the terms associated with said commitment to purchase.

23.   The system of claim 14, wherein said web server is configured to make the offer to said purchaser by:

reading information associated with the commitment to purchase;

determining if the commitment to purchase represents an area of business interest for an improved terms service provider; and

if the commitment to purchase represents an area of interest for said improved terms service provider, then making said offer to said purchaser.

24.   The system of claim 14, wherein conducting said search for said improved terms comprises conducting an auction amongst a plurality of suppliers for said product or service.

25.   The system of claim 14, wherein executing said contract comprises entering a legal contract with said purchaser to supply said product under said improved terms.

26.   The system of claim 14, wherein conducting said search for said improved terms comprises searching a database of preferred suppliers for said product.

27.   The system of claim 14, wherein said client computer system is one or more of the following: a personal computer, a laptop computer, a notebook computer, an

Internet-enabled cellular phone, an Internet-enabled personal digital assistant, or an Internet-enabled television.

28.   A carrier medium comprising program instructions, wherein the program instructions are executable by a computer system to implement the method of claim 1.

29.   A method comprising:

detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price;

in response to said detecting, offering the purchaser an opportunity to enter into an alternative contract in which the purchaser agrees to wait a predetermined amount of time in exchange for a possibility of securing a better price for said particular item or service;

searching for said better price for said particular item or service;

if said better price is found before said predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price; and

if said better price is not found before said predetermined amount of time expires, executing the original purchase for the particular item or service over the Internet for the particular price.

30.   The method as recited in claim 29, wherein if said original purchase is not available after said searching is complete, purchasing said particular item for said purchaser at another price and charging the purchaser said particular price.

31.   The method of claim 29, wherein said detecting comprises detecting said purchaser entering a credit card number or a pre-paid account number or a gift certificate number.

32.   The method of claim 29, wherein said detecting comprises detecting said purchaser viewing a particular web page.

33.   The method of claim 29, wherein said detecting comprises detecting said purchaser accessing a particular URL.

34.   The method of claim 29, wherein said detecting comprises detecting said purchaser clicking an icon to confirm order.

35.   The method of claim 29, wherein said offering said purchaser said opportunity to enter into said alternative contract comprises displaying said alternative contract on a screen of a computer system used by said purchaser to make said original purchase over the Internet.

36.   The method of claim 29, wherein said original purchase comprises a purchase order for which payment has been guaranteed by said purchaser.

37.   The method of claim 29, wherein offering said purchaser said opportunity to enter into said alternative contract comprises:

reading information associated with said original purchase;

determining if said original purchase represents an area of interest for an alternative contract provider;

if said original purchase represents an area of interest for said alternative contract provider:

making said alternative contract to said purchaser.

38.   The method of claim 29, wherein searching for said better price comprises conducting an auction amongst a plurality of suppliers for said particular item.

39.   The method of claim 29, wherein searching for said better price comprises searching a database of preferred suppliers for said particular item.

40.   A carrier medium comprising computer program instructions configured to implement the method of claim 29.

41.   A method comprising:

detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price;

in response to said detecting, automatically delaying said purchase for a predetermined amount of time;

searching for a better price for said particular item or service;

if said better price is found before said predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price; and

if said better price is not found before said predetermined amount of time expires, executing the original purchase for the particular item or service over the Internet for the particular price.

42.   A carrier medium comprising computer program instructions configured to implement the method of claim 41.

43.   The method of claim 41, wherein executing said contract comprises contacting said purchaser with a confirmation of said product purchase.

44.   A method comprising:

detecting an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or service over the Internet for a particular price;

in response to said detecting, accessing a broker-agent web site for seeking a better price for said particular item or service within a predetermined amount of time;

if said better price is found before said predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price; and

if said better price is not found before said predetermined amount of time expires, executing the original purchase for the particular item over the Internet for the particular price.

IX.   <u>EVIDENCE APPENDIX</u>

No evidence submitted under 37 CFR §§ 1.130, 1.131 or 1.132 or otherwise entered by the Examiner is relied upon in this appeal.

X.   RELATED PROCEEDINGS APPENDIX

There are no related proceedings.